

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JAMES JAMAL JACKSON,  
Petitioner

V

C.A. NO. 05-91 ERIE

WARDEN BROOKS,  
Respondent

REPLY BRIEF TO THE COMMONWEALTH'S Response

AND NOW, THIS 5<sup>TH</sup> day, OF JULY 2005 Comes  
Petitioner JAMES JAMAL JACKSON.<sup>005</sup> Petitioner was  
found guilty OF robbery, conspiracy TO commit  
robbery, fire arms NOT TO be carried without a  
License, terroristic threats, simple assault, and  
receiving stolen property. On October 24, 2000  
petitioner was sentenced by The Hon Ernest  
J. Disantis, Jr. TO serve a term OF incarceration  
OF From sixty six (66) TO one hundred thirty two  
(132) months

2. Petitioner, through his trial counsel, filed a motion for judgment of Acquittal and/or NEW Trial in which he raised the following claims: 1) The Verdict was not supported by the weight or sufficiency of the evidence; and 2) The sentence was not supported by the evidence. This motion was denied by the Court of Common Pleas on November 3, 2000.

3. Petitioner filed a Timely notice on December 1, 2000. On direct appeal Petitioner claimed that the verdict was against the weight and sufficiency of the evidence, and that the sentence was manifestly excessive.

4. The Superior Court of Pennsylvania affirmed the Judgment of sentence on January 10, 2002. Accordingly, Petitioner's Judgment of sentence became final February 11, 2002, which date marked the expiration of the period within which Petitioner was allowed to file a petition for Allowance of Appeal with the Pennsylvania Supreme Court.

5. Petitioner ask Does The superior Court have Jurisdiction to deny a Petition For Allowance of Appeal TO The Pennsylvania Supreme Court.

6. Therefore, The Petitioner(s) was not required to file a petition for Allowance of appeal TO The supreme Court, mainly based on The 1999 ruling That a Defendant has exhausted all state remedies at The Superior Court Level. which Time The Commonwealth Clearly States in its response p.2 That The petitioner in fact exhausted all state remedies for purpose of federal habeas relief.  
see Pa. R.A.P 1114.

Hereafter, The Petitioner(s) Filed his First P.C.R.A petition on October 14, 2002. The court of Common Pleas denied This petition on January 29, 2003. That Petition was dismissed as untimely when in fact The Lower court Erraed. By dismissing The first P.C.R.A Petition as untimely.

7. Petitioner argues the unexhausted claims hold merital review by the United States District Court. The courts state there is exceptions to this rule, which exist, where there is an absence of available state corrective process or circumstances exist that render such process ineffective to protect the rights of the petitioner. 28 U.S.C. § 2254 (b)(1)(i) and (ii); *Peterkin v. Horn*, supra.

8. Petitioner ask the District Court to Grant Relit and Allow petitioner to be called back to the lower courts to address the unexhausted claims.

WHEREFORE, For all the above reasons, the  
the Petitioner respectfully requests that The  
Petitioners Writ of Habeas Corpus be granted,  
and that the District Courts call upon the  
Petitioner to exhaust the unexhausted issues.

Respectfully submitted  
James Jackson  
JAMES JACKSON, prose  
PETITIONER

Date 7-7-5-05

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Certificate of Service

I hereby certify that I, James Jamel Jackson, pro se, Petitioner, this 5<sup>th</sup> Day of July 2005, am serving the foregoing Petitioner's Response to the Commonwealth's Rebuttal to Petitioner's writ of Habeas corpus upon the person's and in the manner indicated below.

DISTRICT ATTORNEY'S OFFICE

Erie County Courthouse

140 West Sixth St

Erie PA 16501

Clerk's Office

U.S. Federal Courthouse

17 South Park Row

Erie PA 16501

James Jackson

JAMES JACKSON pro se

petitioner.